

Natural Streambed and Land Preservation Act of 1975

Litigation Synopsis

Supreme Court Decisions

1. Case: Bitterroot River Protection Association, Inc. v. Bitterroot Conservation District, 2002 MT 66 (BRPA I)

Holding: In the interest of both judicial economy and agency efficiency, an exhaustion of administrative remedies allows a conservation district to make a factual record on issues of its jurisdiction under the 310 Law and to correct its own errors within its specific expertise before a court interferes.

Comment: No failure of the CD to act or fail to act under the 310 Law; an attempt by an entity to avoid having the CD initially determine its 310 Law jurisdiction.
2. Case: Bitterroot River Protective Association, Inc. v. Bitterroot Conservation District, 2008 MT 377 (BRPA II)

Holding: 1. The constitutional, statutory, and regulatory provisions of the 310 Law do not permit the imposition of narrow technical definitions in determining a CD's jurisdiction under the Act. 2. A CD, in determining its jurisdiction under the Act, must consider the totality of circumstances demonstrated by the factual record.

Comment: In reviewing the record and making findings of fact and conclusions of law the CD narrowly applied the 310 Law to the facts of the case.
3. Case: Bitterroot River Protective Association, Inc. v. Bitterroot Conservation District, 2011 MT 51 (BRPA III)

Holding: The private attorney general doctrine allows for the awarding of attorney fees under the 310 Law. On remand to district court to clarify against whom the fee judgment can be imposed, it was held that fees could not be imposed against the CD.

Comment: On remand the district court held attorney fees could not be awarded against the CD. No party appealed this determination. As such the determination is not binding outside of the 4th Judicial District (nevertheless it is more likely than not that the theory of law will be followed throughout Montana).
4. Case: Paulson v. Flathead Conservation District, 2004 MT 136

Holding: An arbitration award will not be vacated on the grounds that one of the arbitrators was a former employee of one of the entities involved in the arbitration without direct and demonstrable evidence of partiality.

Comment: The selection of arbitrators is an important consideration in the arbitration process. Litigation could have been avoided by the selection of other than a former employee; nevertheless, employment status by itself is insufficient to establish partiality.

5. Case: Livingston v. Park Conservation District, 2013 MT 234
Holding: When a CD applies a totality of circumstances test in its decision-making its decisions will not be arbitrary or capricious.
Comment: Livingston argued the CD cherry picked the information in the record to reach its determination. A CD's determination will not be reversed because the record contains inconsistent information or information that might support a different result. As long as the consideration of the totality of circumstances is reasonable and thoughtful the determination will not be held to be arbitrary or capricious or contrary to the 310 Law.

District Court Decisions

6. Case: Fortner v. Broadwater Conservation District, Cause No. DV-04-45
Holding: Upheld a Declaratory Ruling that mining activities that resulted in a portion of a historical natural, perennial-flowing stream is subject to 310 Law jurisdiction.
Comment: Historical information is included within the totality of circumstances to be included in the declaratory ruling process. See BRPA II.
7. Case: Murray v. Cascade County Conservation District, CDV-11-0233
Holding: 1. Flood channels of a natural, perennial-flowing stream (river) fall within the purview of the Act. 2. Assertions of law that 310 jurisdiction does not exist as versus assertions of facts do not prevent a CD from later asserting jurisdiction under the Act. 3. The determination of an other agency as to what constitutes a perennial-flowing stream are not binding on a CD in its administration of the Act.
Comment: Supervisors should be careful not to assert outside the purview of the Board the extent of a CD's jurisdiction over a water body unless the CD has made a prior determination as to the nature and character of a particular stream. Likewise supervisors should not assume that because a state agency has determined that a stream is not a perennial flowing stream that the stream is not covered by the 310 Law.
8. Case: City of Livingston v. Heart K Land and Cattle Co. and Park Conservation District, Cause No. DV-10-151
Holding: 1. The supervisors have a greater duty than simply to "consider" all of the statutory factors and their relative impacts. Supervisors are required to investigate facts, ascertain the existence of facts, and draw conclusions from the facts as a basis for their official actions under the 310 Law. 2. If a party disagrees with a supervisors' determination on the Act's jurisdiction on a stream, the next step is to petition for a declaratory ruling. Such a ruling is subject to judicial review (See #5 above).
Comment: Violations of the 310 Law require prompt attention by the supervisors. In this case the supervisors acted promptly and the City intervened to block the CD from enforcing the 310 Law.

9. Case: Salt Creek Partners, LLC v. Fergus Conservation District, DV-07-164
Holding: Two supervisors meeting to review the record of a 310 application constitute a subcommittee of the Board of Supervisors at which a quorum was present and therefore a violation of the open meeting laws where notice of the meeting was not given.
Comment: Supervisors must be extremely aware that conservation district business discuss even between just two supervisors may be a violation of the open meeting laws.

10. Case: State ex rel. Lincoln Conservation District v. Donald and Francis Emery, Cause No. DV-14-61
Holding: Violation occurred resulting in a public nuisance. An abatement order issued as a judgment in favor of the CD enjoining the violator from maintaining a public nuisance per se. Violator directed to follow CD's Restoration Order.
Comment: In a situation involving inconsistent/conflicting information presented by CD witnesses and alleged violator's witnesses the Judge found the CD witnesses to be more credible. Judge ruled from the bench immediately after all testimony had been presented (an unusual action for the Court to take).